



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2017-0546; FRL-9984-53-Region 4]

#### Air Plan Approval; MS; Section 128 Board Requirements for Infrastructure SIPs

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve a State Implementation Plan (SIP) submission, submitted by the State of Mississippi, through the Mississippi Department of Environmental Quality (MDEQ), on June 26, 2018. This SIP submission addresses specific Clean Air Act (CAA or Act) requirements applicable to Mississippi state boards or bodies that approve CAA permits or enforcement orders. This submission also specifically addresses related requirements for implementation of the following national ambient air quality standards (NAAQS): 2008 8-hour Ozone, 2008 Lead, 2010 Nitrogen Dioxide (NO<sub>2</sub>), 2010 Sulfur Dioxide (SO<sub>2</sub>), and 1997, 2006 and 2012 fine particulate matter (PM<sub>2.5</sub>). Whenever EPA promulgates a new or revised NAAQS, the CAA requires the state to make a new SIP submission establishing that the existing SIP meets the various applicable requirements, or revising the SIP to meet those requirements. This type of SIP submission is commonly referred to as an “infrastructure” SIP. In this final action, EPA is approving the June 26, 2018, submission with respect to the CAA requirements applicable to state boards; and the related state board infrastructure SIP requirements for the 2008 8-hour Ozone, 2008 Lead, 2010 NO<sub>2</sub>, 2010 SO<sub>2</sub> and 1997, 2006 and 2012 PM<sub>2.5</sub>, NAAQS. This action

removes EPA's obligation to promulgate a Federal Implementation Plan (FIP) to address these CAA state board requirements for Mississippi.

**DATES:** This rule will be effective **[Insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2017-0546. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Nacosta C. Ward, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9140. Ms. Ward can be reached via electronic mail at [ward.nacosta@epa.gov](mailto:ward.nacosta@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

States must submit infrastructure SIP submissions meeting the applicable requirements of sections 110(a)(1) and (2) of the CAA within three years after EPA's promulgation of a new or revised NAAQS. Sections 110(a)(1) and (2) require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the new or revised NAAQS. More specifically, section 110(a)(1) provides the procedural and timing requirements for infrastructure SIP submissions. Section 110(a)(2) lists specific requirements that states must meet for "infrastructure" SIP purposes, as applicable, related to the newly established or revised NAAQS. In particular, section 110(a)(2)(E)(ii) requires states to include provisions in their SIP to address the state board requirements of section 128. Section 128 of the CAA requires that states include provisions in their SIP that require that any state board or body which approves permits or enforcement orders shall have a majority of members who represent the public interest and do not receive a significant portion of their income from parties subject to such permits or enforcement orders (section 128(a)(1)); and require that the members of any such board or body, or the head of an executive agency with similar power to approve permits or enforcement orders under the CAA, shall adequately disclose potential conflicts of interest (section 128(a)(2)).

In a notice of proposed rulemaking (NPRM) published on March 30, 2018 (83 FR 13712), EPA proposed to approve Mississippi's June 23, 2017, and February 2, 2018, parallel processing submissions related to the state board requirements as meeting the significant portion of income requirements of section 128(a)(1), and also as meeting the infrastructure requirements of section 110(a)(2)(E)(ii) for the 1997, 2006, and 2012 PM<sub>2.5</sub>, 2008 8-hour Ozone, 2008 Lead,

2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS. In the NPRM, EPA also proposed approval of the new supplemental provisions regarding representation of the public interest of section 128(a)(1) for the MDEQ Permit Board and Mississippi Commission on Environmental Quality, and disclosure of potential conflicts of interest of section 128(a)(2) for the Mississippi Commission on Environmental Quality. The details of Mississippi's submissions and the rationale for EPA's actions related to how Mississippi addressed the requirements of section 128 and the related infrastructure section 110(a)(2)(E)(ii) requirements for the aforementioned NAAQS are explained in the NPRM.

EPA is finalizing its proposed approval of Mississippi's June 26, 2018<sup>1</sup> submission to incorporate into its SIP certain regulatory provisions to address the significant portion of income requirement of section 128(a)(1). As a result of the addition of these new SIP provisions to meet the requirements of section 128(a)(1), EPA is also finalizing approval of this submission as satisfying the section 110(a)(2)(E)(ii) infrastructure requirement for the 1997, 2006, and 2012 PM<sub>2.5</sub>, 2008 8-hour Ozone, 2008 Lead, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS. This final action fully addresses the SIP deficiencies related to section 110(a)(2)(E)(ii) and section 128 from EPA's prior disapprovals of infrastructure SIP submissions for the 2008 8-hour Ozone NAAQS on March 2, 2015 (80 FR 11133), 2008 lead NAAQS on March 30, 2015 (80 FR 16566), 2010 NO<sub>2</sub> NAAQS on August 16, 2016 (81 FR 63705), 2010 SO<sub>2</sub> NAAQS on September 30, 2016 (81 FR 67171), and 2012 PM<sub>2.5</sub> NAAQS on December 12, 2016 (81 FR 89391). Thus, this final action also satisfies EPA's FIP obligation with regard to that infrastructure SIP requirement for these NAAQS based on the prior disapprovals.

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<sup>1</sup> The three components of Mississippi's June 26, 2018 submission became state effective on July 1, 2016, May 11, 2018, and June 25, 2018.

## **II. Response to Comments**

EPA received comments from a total of nine commenters, but only one commenter submitted comments relevant to this action.

**Comment 1:** With regard to the parallel proceedings process used in the proposed rulemaking, the Commenter states that: “[b]ecause EPA is required to allow the public to submit meaningful comments, we cannot comment on any changes the State may make after we submit these comments. Therefore, if the State makes any changes after EPA’s public comment period is up, EPA could not approve the submittal with those changes without a new public comment period.”

**Response to Comment 1:** EPA notes that the final SIP revision adopted and submitted to EPA by Mississippi is identical to the draft regulations EPA described in the proposal. As a result, the potential scenario described by the Commenter does not exist in the instant action, as the Commenter and others had the opportunity to comment on the exact regulatory language that was adopted by Mississippi in its final submission and is approved in this final rulemaking action. Nevertheless, EPA takes this opportunity to confirm its longstanding interpretation of parallel processing requirements as allowing EPA to finalize a proposal without further public comment where there are no significant changes in the state’s final submission, i.e., when the state’s final submission is substantively similar to the draft state regulations on which the NPRM was based. To the extent the Commenter suggests otherwise, EPA disagrees. EPA’s established procedures for parallel processing are codified at 40 CFR part 51, appendix V, 2.3 and serve to expedite review of SIP submissions. Under parallel processing, a state will submit a draft SIP revision to EPA prior to final adoption of that revision by the state. If EPA believes the draft SIP submission is approvable, it publishes a notice of proposed rulemaking prior to finalization at the state level and the public is able to comment on EPA’s proposed approval of the state’s draft SIP

submission. After finalization at the state level and receipt of the final submission from the state, EPA reviews this final submittal and can finalize its prior proposed approval of the submission if it is substantively similar to the draft. If there are significant changes in the state's final submission such that it is not substantively similar to the prior draft, then EPA will issue a subsequent proposal to solicit comment on those changes or other issues that were not included in the initial proposed action. By this process, commenters are provided an opportunity to comment on all pertinent issues related to the SIP submission, as mandated under Federal law establishing procedural requirements for agency rulemakings. EPA notes that this approach was reflected in the proposed rulemaking for this action wherein we stated that if the State's SIP submission as finally adopted and submitted to EPA is changed in aspects other than those identified in the proposed rulemaking, then "EPA will evaluate those changes, and if necessary and appropriate, issue another notice of proposed rulemaking." *See* 83 FR 13713.

**Comment 2:** The Commenter notes that the submission does not include evidence of adoption of the SIP revision and states that EPA cannot approve the SIP submittal without this evidence.

**EPA Response to Comment 2:** Because SIP submissions that a state submits for parallel processing are by definition not yet final at the state level, 40 CFR part 51, appendix V, 2.3 provides exceptions from the SIP completeness criteria specified in 40 CFR part 51, appendix V, 2.0. Appendix V, 2.3.1(b) does not require a state to provide evidence of adoption of the plan in final form at the state level in a SIP submission submitted for parallel processing. The state, however, is required to submit a SIP submission meeting these completeness requirements before EPA can make a final determination of approvability. *See* 40 CFR part 51, appendix V, 2.3.2. For this action, Mississippi's final submission includes the required evidence of adoption of the SIP revisions in Attachment 3 of the Technical Support Document.

**Comment 3:** The Commenter states that EPA should include the dates of the version of the State's code and regulations it is incorporating by reference so that future readers can determine exactly what language is incorporated by reference. More specifically the Commenter states that: "EPA should specify that it is incorporating by reference the July 1, 2016 version of paragraph 6 of Section 49-2-5 and the effective date, which we cannot determine by the documents in the current docket, of the Mississippi Administrative Code."

**EPA Response to Comment 3:** EPA agrees that incorporations by reference should specify the appropriate state law effective date as a means of identifying the precise version of the statutory or regulatory requirements at issue in a SIP submission. In this instance, July 1, 2016, is the state law effective date for Mississippi Code section 49-2-5(6). This final action specifies the provisions that are being incorporated into the Code of Federal Regulation (CFR) at 40 CFR 52.1270 and identifies them by their state law effective dates. EPA notes that SIP submissions that states submit for parallel processing are not required to identify the state effective date (*see* 40 CFR part 51, appendix V, 2.3.1(b)). In fact the state law effective date of draft SIP submissions that a state submits for parallel processing would typically not be known at the time of submission, because submissions for parallel processing will often (if not always) predate adoption at the state level. But again, EPA cannot make a final determination of plan approvability until the state adopts the final version of the state law at issue in the SIP submission and submits evidence of adoption with the state law effective date in its final submission.

**Comment 4:** The Commenter also notes a typographical error in EPA's proposed action in the second column of 83 FR13715. Specifically, the Commenter notes that the proposal states: "and

a process for replacing members as needed to ensure that a majority does derive a significant portion of income from regulated entities,” but should state: “and a process for replacing members as needed to ensure that a majority does *not* derive a significant portion of income from regulated entities. (Emphasis added)”

**EPA Response to Comment 4:** EPA acknowledges that the omission of the word “not” from the preamble to EPA’s proposed action was a scrivener’s error and that the Commenter is correct that the word “not” should be inserted into this statement, consistent with EPA’s discussion of the SIP revision in the proposal and the actual provisions EPA is incorporating in this action.

### **III. Incorporation by Reference**

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of Mississippi Code section 49-2-5, state effective date July 1, 2016, which includes certain section 128 requirements for the MDEQ Commission on Environmental Quality. EPA is also finalizing the incorporation by reference of “Air Emissions Regulations for the Prevention, Abatement, and Control of Air Contaminants” Title 11, Part 2, Chapter 1, Rule 1.1, state effective date June 25, 2018; and “Regulations Regarding Administrative Procedures Pursuant to the Mississippi Administrative Procedures Act”, Title 11, Part 1 Chapter 5, Rule 5.1, state effective date May 11, 2018, which both include certain section 128 requirements for the MDEQ Permit Board. EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under



sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated in the next update to the SIP compilation.<sup>2</sup>

#### **IV. Final Action**

As described above, EPA is taking action to approve SIP revisions needed to assure that Mississippi's SIP meets the significant portion of income requirements of 128(a)(1) of the CAA. Approval of Mississippi's June 26, 2018 submission also meets the section 110(a)(2)(E)(ii) requirements for the 2008 8-hour Ozone, 2008 Lead, 2010 NO<sub>2</sub>, 2010 SO<sub>2</sub>, and 1997, 2006 and 2012 PM<sub>2.5</sub>, NAAQS for section 110(a)(2)(E)(ii). With this approval, the deficiencies that EPA identified in the previous partial disapprovals of Mississippi's infrastructure SIP submissions related to the significant portion of income requirements respecting state boards for the 2008 8-hour Ozone, 2008 Lead, 2010 NO<sub>2</sub>, 2010 SO<sub>2</sub>, and 1997, 2006 and 2012 PM<sub>2.5</sub>, NAAQS are resolved. This action therefore removes EPA's obligation to promulgate a FIP to address these CAA state board requirements for Mississippi. Finally, EPA is also approving the new supplemental provisions regarding representation of the public interest of section 128(a)(1) for the MDEQ Permit Board and Mississippi Commission on Environmental Quality, and disclosure of potential conflicts of interest of section 128(a)(2) for the Mississippi Commission on Environmental Quality.

#### **V. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This action merely approves state law as

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<sup>2</sup> *See* 62 FR 27968 (May 22, 1997).

meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be

filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

## **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Intergovernmental relations,  
Incorporation by reference, Lead, Nitrogen dioxide, Ozone, Reporting and recordkeeping  
requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 10, 2018.

Onis “Trey” Glenn, III

Regional Administrator,  
Region 4.

40 CFR part 52 is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

**Subpart Z—Mississippi**

2. Section 52.1270 is amended by:

a. In paragraph (c) table:

i. Adding under the heading “Mississippi Code” the entry “Section 49-2-5” in numerical order;

ii. Adding at the end of the table the undesignated heading “11 MAC - Part 2 - Chapter 1 Air Emission Regulations for the Prevention, Abatement, and Control of Air Contaminants” and the entry “Rule 1.1”; and

iii. Adding at the end of the table the undesignated heading “11 MAC - Part 1 - Chapter 5 Mississippi Environmental Quality Permit Board: Regulations Regarding Administrative Procedures Pursuant to the Mississippi Administrative Procedures Act,” and the entry “Rule 5.1”; and

b. In paragraph (e) table by adding entries “110(a)(1) and (2) Infrastructure Requirements for the 1997 Annual PM<sub>2.5</sub> NAAQS”, “110(a)(1) and (2) Infrastructure Requirements for the 2006 24-hour PM<sub>2.5</sub> NAAQS”, “110(a)(1) and (2) Infrastructure Requirements for the 2012 24-hour PM<sub>2.5</sub> NAAQS”, “110(a)(1) and (2) Infrastructure Requirements for the 2008 Lead NAAQS”, “110(a)(1) and (2) Infrastructure Requirements for the 2008 8-hour

Ozone NAAQS”, “110(a)(1) and (2) Infrastructure Requirements for the 2010 NO<sub>2</sub> NAAQS”, and “110(a)(1) and (2) Infrastructure Requirements for the 2010 SO<sub>2</sub> NAAQS” at the end of the table.

The additions read as follows:

**§ 52.1270 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

**EPA-APPROVED MISSISSIPPI REGULATIONS**

<b>State citation</b>	<b>Title/subject</b>	<b>State effective date</b>	<b>EPA approval date</b>	<b>Explanation</b>
**	**	*	*	*
<b>Mississippi Code</b>				
**	**	*	*	*
Section 49-2-5	Commission on Environmental Quality	7/1/2016	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
**	**	*	*	*
<b>11 MAC - Part 2 - Chapter 1 Air Emission Regulations for the Prevention, Abatement, and Control of Air Contaminants</b>				

Rule 1.1	General	6/25/2018	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
<b>11 MAC - Part 1 - Chapter 5 Mississippi Environmental Quality Permit Board: Regulations Regarding Administrative Procedures Pursuant to the Mississippi Administrative Procedures Act</b>				
Rule 5.1	Description of Mississippi Environmental Quality Permit Board	5/11/2018	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	

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(e) \* \* \*

#### **EPA APPROVED MISSISSIPPI NON-REGULATORY PROVISIONS**

<b>Name of non-regulatory SIP provision</b>	<b>Applicable geographic or nonattainment area</b>	<b>State submittal date/effective date</b>	<b>EPA approval date</b>	<b>Explanation</b>
**	**	*	*	*
110(a)(1) and (2) Infrastructure Requirements for the 1997 Annual PM <sub>2.5</sub> NAAQS	Mississippi	6/25/2018	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	Addressing the state board requirements of sections 128 and 110(a)(2)(E)(ii) only
110(a)(1) and (2) Infrastructure Requirements for the 2006 24-hour PM <sub>2.5</sub>	Mississippi	6/25/2018	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	Addressing the state board requirements of sections 128 and 110(a)(2)(E)(ii) only



NAAQS			citation]	
110(a)(1) and (2) Infrastructure Requirements for the 2012 24-hour PM <sub>2.5</sub> NAAQS	Mississippi	6/25/2018	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	Addressing the state board requirements of sections 128 and 110(a)(2)(E)(ii) only
110(a)(1) and (2) Infrastructure Requirements for the 2008 Lead NAAQS	Mississippi	6/25/2018	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	Addressing the state board requirements of sections 128 and 110(a)(2)(E)(ii) only
110(a)(1) and (2) Infrastructure Requirements for the 2008 8-hour Ozone NAAQS	Mississippi	6/25/2018	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	Addressing the state board requirements of sections 128 and 110(a)(2)(E)(ii) only
110(a)(1) and (2) Infrastructure Requirements for the 2010 NO <sub>2</sub> NAAQS	Mississippi	6/25/2018	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	Addressing the state board requirements of sections 128 and 110(a)(2)(E)(ii) only
110(a)(1) and (2) Infrastructure Requirements for the 2010 SO <sub>2</sub> NAAQS	Mississippi	6/25/2018	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	Addressing the state board requirements of sections 128 and 110(a)(2)(E)(ii) only

3. Section 52.1272 is revised to read as follows:

**§ 52.1272 Approval status.**

With the exceptions set forth in this subpart, the Administrator approves Mississippi's plan for the attainment and maintenance of the national standards under section 110 of the Clean Air Act.

Furthermore, the Administrator finds that the plan satisfies all requirements of part D, title 1, of the Clean Air Act as amended in 1977.

[FR Doc. 2018-21193 Filed: 10/3/2018 8:45 am; Publication Date: 10/4/2018]